

**INSTRUCTIONS FOR THE PREPARATION AND
SUBMISSION OF PROPOSED ORDERS FOR THE
UNITED STATES BANKRUPTCY COURT FOR THE
MIDDLE DISTRICT OF ALABAMA**

September 16, 2003

By: William R. Sawyer
Chief U.S. Bankruptcy Judge
Middle District of Alabama

Last year, after going live on our new CM/ECF system, we implemented a procedure whereby lawyers could submit proposed orders to the Court via e-mail. This has been well received by the bar and has been a tremendous benefit to the Court. The cooperation of the bar has been outstanding. As Judge Williams and I have noted several recurring problems, I thought it would be useful to provide a guide for the submission of proposed orders. Proposed orders most frequently arise in connection with motions for relief from the automatic stay, but most of the instructions apply equally to other orders.

GENERAL RULES

The first rule regarding the preparation of a proposed order is that it should reflect what actually has taken place. As most proposed orders are the product of an agreement between the parties, the proposed order should clearly indicate that fact. I believe that it is a good practice to include the terms "Agreed Order" or "Stipulated Order" in the title of the order. In some instances, counsel have submitted orders which recite that a hearing was held, when in fact there was no such hearing. Agreed orders are as binding as orders which are the product of a full blown, contested evidentiary hearing. Moreover,

an order which erroneously recites the fact that a hearing took place would be readily set aside on appeal. I have attached examples of agreed orders which may provide guidance.

Lawyers should not submit a proposed agreed order unless there is, in fact, an agreement. Submission of an agreed order is a representation of two things: first, that there is an agreement and second, that the proposed order fairly encompasses that agreement. If a lawyer becomes aware that the Court has entered an agreed order in error, he should make opposing counsel aware of the problem promptly. If counsel are able to remedy the matter quickly, an amended proposed order should be sent promptly to the Court. If counsel are unable to agree, a motion to vacate the order should be filed promptly. The Court considers it a violation of the Code of Professional Responsibility for a lawyer to submit a proposed agreed order when he knows that there is not in fact an agreement.

In those instances when a hearing is actually held, the proposed order should indicate the date of the hearing and accurately reflect what took place. I believe it is a good idea to identify all counsel by name. If one party concedes or is unable to contest the matter, then the order should accurately reflect what took place. The order should not state that witnesses were sworn and evidence heard unless that actually took place. In some instances the parties will stipulate to the facts and argue the law. If that is the case, the order should state that a factual stipulation is on the record. The proposed order need not contain a full recitation of the facts.

12 RULES FOR THE SUBMISSION OF PROPOSED ORDERS

The following list of technical rules will provide guidance to lawyers who are submitting proposed orders.

1. The proposed order should be captioned properly. An order disposing of a contested matter in the main case should not be captioned as if it were an adversary proceeding, and vice versa. Carefully check the case name and case number as well as the names of the interested parties. See, Official Forms 16(A)–(D).

2. Make sure the proposed order has a standard, professional appearance. Please do not use unusual type styles. Times New Roman or Courier fonts in 12 point type are preferred. Also, please do not use proposed orders for practice development. The name of the lawyer submitting the order should not be larger or featured more prominently than the names of other lawyers or the rest of the text. It is a good idea to use the moving party's name in the title. For example, "Order Conditionally Denying XYZ Bank's Motion for Relief From the Automatic Stay."

3. Proposed orders should be submitted in WordPerfect or Word format. Please do not submit proposed orders in PDF, TIF or ASCII II formats. Please do not submit proposed orders in "read only" format.

3. Use a minimum of 1 inch margins on top, bottom and on both sides.

4. The name of the lawyer submitting the order should be provided at the bottom of the order, below the judge's signature at the left margin. Please do not put the lawyer's name in the top left hand corner of the document. Please provide a "c: list" at the lower left corner of the document listing the names of all counsel who have an interest in the matter encompassed by the order.

5. The Court uses a macro to put the date and signature of the judge on the proposed order. Please leave the formatting open so as not to disrupt this process.

6. Proposed orders conditionally denying relief from the automatic stay in Chapter 13 cases must be submitted to the Trustee for approval if changes are made to collateral values, interest rates, specified payments or if they contain other terms which may have an impact upon the plan.

7. Do not submit proposed orders which purport to impose duties upon the Clerk of the Court or other entities who were not parties to the agreement.

8. Do not insert provisions which purport to bind parties other than those who are a party to the agreement.

9. Overreaching is in bad form. Drop dead provisions should be reasonable. A monetary default provision should be at least 20 days and an insurance drop dead provision should be at least 10 days.

10. Do not provide a Rule 4001(a)(3) waiver of the 10 day period of the stay in agreed cases unless the parties have agreed specifically. In cases which are decided other than by agreement, waivers may not be provided unless the initial pleading requests such a waiver and some evidence in support of such a waiver is proffered.

11. Avoid unnecessarily long and complicated proposed orders. Remember, the idea is to resolve a matter and not to generate further litigation.

12. Proposed orders should be submitted electronically as follows:

To Judge Sawyer: wrs@almb.uscourts.gov

To Judge Williams: dhw@almb.uscourts.gov

